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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 13

BECKER STEEL COMPANY OF AMERICA,
PETITIONER,

vs.

HOMER S. CUMMINGS, ATTORNEY GENERAL
OF THE UNITED STATES, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 27, 1935.

CERTIORARI GRANTED APRIL 29, 1935.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 10, 1935.

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[fol. 1] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BECKER STEEL COMPANY OF AMERICA, Complainant-Appellant,

against

HOMER S. CUMMINGS, Attorney General of the United States in His Official Capacity as Alien Property Custodian, and WILLIAM A. JULIAN, as Treasurer of the United States, Defendants-Respondents

STATEMENT UNDER RULE XIII

This suit in equity under the "Trading with the Enemy Act" was brought by Becker Steel Company of America, the bill of complaint being filed on July 24, 1934. On August 9, 1934, the defendants appearing specially by Hon. Martin Conboy, United States Attorney for the Southern District of New York, served a notice of motion to dismiss the bill of complaint on the ground of lack of jurisdiction of the persons of the defendants or of the subject matter of the action.

By stipulation between the solicitors, the defendants admitted that copies of the complaint were served upon them, and waived all questions as to the manner of such service.

The motion of the defendants came on for argument before United States Circuit Judge Julian W. Mack on Sep- [fol. 2] tember 28, 1934, and he rendered an opinion granting the motion to dismiss for lack of jurisdiction, and signed an order and decree dated October 4, 1934, which was duly entered on October 5, 1934. Notice of appeal and assignment of errors were filed October 15, 1934.

[Subpœna, dated July 24, 1934, omitted by consent.]

[fol. 3] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

In Equity. Vol. 78, P. 289

BECKER STEEL COMPANY, Complainant,

against

HOMER S. CUMMINGS, Attorney General of the United States in His Official Capacity as Alien Property Custodian, and WILLIAM A. JULIAN, as Treasurer of the United States, Defendants.

COMPLAINT

To the Honorable Judges of the United States District Court in and for the Southern District of New York, Sitting in Equity:

Becker Steel Company of America, organized as a corporation under the laws of the State of West Virginia, through its solicitors, Townsend & Kindleberger, presents this its bill of complaint, and respectfully alleges:

First: That at all times mentioned herein complainant was a corporation organized under the laws of the State of West Virginia, and on and prior to June 12, 1929, had its principal place of business in the Borough of Manhattan, City of New York, State of New York, and within the Southern District of New York.

[fol. 4] Second: That heretofore, and on or about the 12th day of June, 1929, the complainant being indebted to the State of West Virginia for corporation taxes, a decree was rendered in a chancery case in West Virginia brought by the State of West Virginia against the Austin Coal & Coke Company and many other resident and non-resident corporations, whereby the Circuit Court of Kanawha County, West Virginia, rendered a decree purporting to forfeit and annul the charter rights of each of said corporations, including the charter of this complainant, said Becker Steel Company of America. This suit is being prosecuted in the name of said Becker Steel Company of America, by the surviving officers, directors and stockholders thereof, to collect property which, in equity and justice, be-

longed to said corporation at the time of said decree of dissolution.

Third: On information and belief, that by Executive Order of the President of the United States, duly made on May 1, 1934, under the provisions of the Act of Congress of March 3, 1933 (47 Stat. 1489, 517), and now in force, the office of the Alien Property Custodian was abolished and the duties and powers of the Alien Property Custodian devolved upon the Attorney General of the United States, and that he is now acting as such Custodian under and pursuant to said executive order, the provisions of the Trading with the Enemy Act, an Act of Congress approved October 6, 1917, and the acts supplemental and amendatory thereof.

Fourth: On information and belief, that the defendant William A. Julian, duly qualified as Treasurer of the United States in or about the month of June, 1933, and is now [fol. 5] performing the duties of said office.

Fifth: This suit arises under the laws of the United States of America, and this court has jurisdiction thereof under said law, particularly under said Act of Congress approved October 6, 1917, known as the Trading with the Enemy Act, and the Acts of Congress amendatory and supplemental thereto.

Sixth: On information and belief that from and after February 9, 1917, the only outstanding capital stock of complainant was 2,200 shares that were owned by Adolf Becker, who had been a citizen of the United States since November 19, 1907; and 200 shares held by William Peters, a citizen of the United States; that the other 5,000 shares which had been previously issued had been surrendered and turned in to complainant's treasury for cancellation, and were duly owned by the complainant.

Seventh: On information and belief that on or about July 12, 1918, A. Mitchell Palmer, the then Alien Property Custodian, and his agents, having theretofore taken possession of the property and records of the complainant, upon the alleged ground that complainant and the stock thereof was owned and controlled by one Reinhold Becker, a resident and subject of the then Empire of Germany, and an enemy alien, or by Stahlwerk Becker, A. G., a German

corporation, owned and controlled by enemy aliens, in violation of law, compelled and caused the issuance by complainant's officers of two certificates of stock of 2,500 shares each in the names of "William Peters, for Reinhold Becker, [fol. 6] or Stahlwerk Becker, A. G."; and by threats and duress and in further violation of law and without legal authority or right, compelled said William Peters to endorse said two certificates over to said A. Mitchell Palmer, as Alien Property Custodian; and thereafter in like violation of law, proceeded to cause the transfer of said two certificates on complainant's books to said Palmer, as Alien Property Custodian, and the issuance to said Palmer in said capacity of a new certificate for 5,000 shares of complainant's stock.

Eighth: On information and belief, that thereafter action was duly brought by the complainant against said Palmer in the United States District Court in and for the Southern District of West Virginia, to require the return of 2,500 shares of said stock (representing the shares allotted for purchase of certain machinery) that was never delivered to the complainant; and thereafter, pursuant to decree of said United States District Court in said action, said 2,500 shares were returned to the complainant by said Palmer.

Ninth: On or about February 20, 1919, said Palmer conducted an alleged sale of the other 2,500 shares of complainant's stock not returned as hereinabove alleged, for the sum of $20,000; which sum was received and turned over by him to the then Treasurer of the United States.

Tenth: That the 2,500 shares of complainant's treasury stock so sold for $20,000 belonged to, and were the sole property of, the complainant: and were unlawfully seized, converted and sold by said Palmer: and were of the full [fol. 7] value of $20,000: and the proceeds of said sale and interest thereon at all times belonged to this complainant.

Eleventh: On information and belief, that from the $20,000, proceeds of said sale of said 2,500 shares of stock of the complainant, unlawfully sold as aforesaid, the then Alien Property Custodian, without the knowledge or authority of the complainant, paid out from the principal of said fund so received the following sums to the following people:

Emery, Booth, Janny & Varney	$210.15
American Appraisal Co.	375.00
Haskins & Sells Audit	60.00
Frank Presbrey Co., Advertising	311.99
" " " Printing	624.33
R. H. Weller	500.00
J. L. Lang	968.75
W. E. Chilton, Leg. Ser.	500.00
E. N. Jones, Expenses	87.62
C. F. Dichey	50.00
Dist. Nat'l Bk. Wash. Dep. Fee	200.00
	$3,887.84

that all of said payments were for advertising and printing of a catalog of the unlawful sale of said stock; for legal services in connection with said unlawful sale, and for other expenses directly due to the making of said sale.

Twelfth: Upon information and belief, that the payments so unlawfully made by the then Alien Property Custodian's office and the then Treasurer of the United States, were made from the principal amount received on the unlawful and improper sale of said stock complained of, and [fol. 8] not from the income or other property of this complainant, which had theretofore been seized by the said Alien Property Custodian, nor were any of the said payments made in connection with the preservation of said property or the care of the same; and none of them could properly have been incurred, if said 2,500 shares of stock had not been improperly and illegally sold, as hereinbefore set forth.

Thirteenth: On information and belief, on or about the 12th day of October, 1922, complainant duly filed with Thomas W. Miller, the then Alien Property Custodian, notice of complainant's claim for the return of said $20,000 (the proceeds of said unlawful and improper sale of said stock), said claim being made pursuant to the provisions of Section 9 of the Trading with the Enemy Act; that said Alien Property Custodian failed to repay said sum of $20,000 with interest thereon, to the complainant.

Fourteenth: On information and belief, that thereafter a suit was brought in the year 1922 in the District Court

of the United States for the Southern District of New York, under Section 9 of said Trading with the Enemy Act, against Thomas W. Miller, the then Alien Property Custodian, and Frank White, the then Treasurer of the United States, for the return of $20,000 the gross proceeds of the sale of said 2,500 shares of stock of the said complainant; which the said bill of complaint charged had been improperly seized and sold by A. Mitchell Palmer, the then Alien Property Custodian. This suit, known as Equity No. 25-35, came on for trial in said United States District Court for the Southern District of New York, before United States [fol. 9] District Judge Augustus N. Hand, sitting in equity, on or about August 5, 1925, who rendered an opinion in favor of the complainant.

Fifteenth: On information and belief, that on or about August 21, 1925, said Judge Augustus N. Hand rendered a final decree, reading as follows:

(Caption and Title)

"This cause came on to be heard at this term, and was argued by counsel and thereupon, upon consideration thereof, it is

Ordered, adjudged and decreed that the 2500 shares of the capital stock of the complainant, heretofore seized and sold by the Alien Property Custodian, was at the time of said seizure treasury stock belonging to the complainant, a West Virginia corporation, and not subject to seizure and sale as the property of an enemy alien; and it is further

Ordered, adjudged and decreed that Frederick C. Hicks as Alien Property Custodian be and he is hereby substituted in place and stead of Thomas W. Miller as Alien Property Custodian; and it is further

Ordered, adjudged and decreed that the defendants Frederick C. Hicks, as Alien Property Custodian, and Frank J. White, as Treasurer of the United States, forthwith pay to the complainant herein the sum of $20,000, being the amount of the proceeds of the sale of said stock, as prayed for in the bill of complaint herein.

Augustus N. Hand, District Judge."

[fol. 10] No appeal was taken from said judgment and decree.

Sixteenth: On information and belief, that on or about October 10, 1925, when complainant attempted to collect the $20,000 adjudged to be due it under the said decree of Judge Augustus N. Hand made August 21, 1925, the then Alien Property Custodian informed complainant for the first time that his office had expended out of the $20,000 received from the said sale of said stock, various sums aggregating $3,887.84, so that there was only a balance of $16,112.16 in the "trust." The items of the expenditures aggregating $3,887.84 were not given to complainant, and no accounting whatever was rendered to it until in or about the month of September, 1931, when complainant was first informed by the office of the then Alien Property Custodian that certain items aggregating the said sum of $3,887.84, were spent as hereinbefore set forth in this bill of complaint.

Seventeenth: On information and belief that prior to October, 1925, there had been no decision of the United States Supreme Court, or of any United States Circuit Court of Appeals, determining whether the Alien Property Custodian and/or the Treasurer of the United States were entitled to deduct from the property of American citizens improperly seized under the Trading with the Enemy Act, any sum from the principal of said property, or what, if any, deductions could be made from income of property of Americans that might be adjudged under Section 9 of said Trading with the Enemy Act to have been improperly seized.

[fol. 11] Eighteenth: On information and belief, that in October, 1925, it was the general practice of the Attorney General of the United States, the Alien Property Custodian and the Treasurer of the United States, before making any payments under decrees rendered in suits brought under Section 9 of the Trading with the Enemy Act, to insist that the Alien Property Custodian had a right to make various deductions from funds of American individual citizens or corporations, and to refuse to surrender the property of such American citizens or corporations, unless said American citizen or corporation would accept in full settlement of his or its claim solely the property or moneys or funds shown by the books of the Alien Property Custodian or Treasurer of the United States to remain allocated to said fund or trust.

Nineteenth: On information and belief, that following the practice of said Alien Property Custodian and the Treasurer of the United States, the then Alien Property Custodian and the then Treasurer of the United States, refused to deliver to complainant the sum of $16,112.16, admittedly remaining in the so-called "trust", being the net proceeds of the sale of said 2,500 shares of stock of this complainant, less the so-called expenses hereinbefore referred to, unless the complainant would sign, or cause to be signed, a warrant of satisfaction in full of the said decree of Judge Augustus N. Hand, dated August 21, 1925, and a full release; that pursuant to duress in law exerted against this complainant by the then Alien Property Custodian and the then Treasurer of the United States, on October 10, 1925, this complainant and its solicitors signed [fol. 12] and executed the release and warrant of satisfaction of decree, prepared in the form required by the Attorney General of the United States to be signed by this complainant and all others making similar claims.

Twentieth: On information and belief, that in the year 1926, the Supreme Court of the United States rendered its decision in the case of Henkels v. Miller, as Alien Property Custodian, 271 U. S. 298, to the effect that the Alien Property Custodian must pay interest on accumulated moneys in his hands, where the principal was due to American citizens or corporations.

Twenty-first: On information and belief, that after said decision in Henkels v. Miller, as aforesaid, complainant made a claim to the then Alien Property Custodian for accumulated interest on the $20,000 mentioned and described in the said final decree of August 21, 1925.

Twenty-second: On information and belief, that thereafter and in the year 1927, the then Alien Property Custodian and the then Treasurer of the United States, notwithstanding the release and satisfaction of decree that complainant had been compelled to sign as aforesaid, and without requiring the institution of action for said interest, voluntarily paid to complainant, interest on the principal sum of $16,112.16.

Twenty-third: On information and belief, that on April 28, 1930, the Supreme Court of the United States in the case of Escher v. Woods, as Treasurer of the United States,

281 U. S. 379, reversing the decision of the Court of Ap-
[fol. 13] peals of the District of Columbia, held that it was improper for the Alien Property Custodian to deduct two per cent of the amount of the so-called trust in that case. The opinion of Mr. Justice Holmes said:

"But, and this is the main thing, all of these provisions naturally are interpreted to refer to property that the Custodian is entitled to hold. It would be extraordinary if the charges incident to a seizure that the law did not intend the Custodian to make and a possession that the law requires him to surrender, were to be imposed upon the owner whose interests were sacrificed up to the moment of restitution. It seems to be going far enough to require him to bear the loss that he has suffered, without compelling him to pay the Government for its outlay in doing him harm. See Hobbs v. McLean, 117 U. S. 567, 582, 6 S. Ct. 870, 29 L. Ed. 940."

Twenty-fourth: On information and belief, that thereafter by motion dated February 8, 1932, complainant asked the United States District Court for the Southern District of New York for ancillary and supplementary relief to compel Howard Sutherland, the then Alien Property Custodian, and Walter O. Woods, the then Treasurer of the United States, to return and repay to this complainant $3,887.84, which it alleged had been improperly and unlawfully paid out from the principal of the fund belonging to this complainant by the former Alien Property Custodian and the former Treasurer of the United States, together with interest thereon.

[fol. 14] Twenty-fifth: On information and belief, that in opposition to the motion for ancillary and supplementary relief recited in the preceding paragraph of this complainant, the Attorney General of the United States appeared specially and urged that Howard Sutherland and Walter O. Woods, who were then the Alien Property Custodian and Treasurer of the United States, respectively, had not been substituted in the said suit brought by complainant against the former Alien Property Custodian and former Treasurer of the United States, as provided in the Act of Congress of February 13, 1925 (Sec. 11 (28 U. S. C. A. Sec. 780)). Said Act provides that if, during the pendency of an action or suit brought by or against an officer of the

United States, and relating to the present or future charge of his official duties, such officer ceases to hold such office, the suit may be continued by or against his successor in office if application is made within six months after such predecessor has left the office.

Twenty-sixth: On information and belief, that upon said motion United States District Judge Henry W. Goddard held that said Act of Congress of February 13, 1925, Section 11, applied, and as individuals who had been acting as the Alien Property Custodian and Treasurer on August 21, 1925, had resigned and been succeeded by other officials, who had not been substituted as provided in said Act, that the court had no power to allow substitution to be made after the said six-months period, and the court could not require the Alien Property Custodian or the Treasurer of the United States in office in 1932 to pay over money, as they were not parties to the said suit.

[fol. 15] Twenty-seventh. The Circuit Court of Appeals, Second Circuit, 66 Fed. (2d) 513, affirmed the said decision of Judge Goddard, on the ground that a suit is pending until a judgment is entirely satisfied, and that the said statute of 1925 applied; and accordingly no relief could be granted in said former suit.

Twenty-eighth: The Supreme Court of the United States denied on October 16, 1933, the application of the complainant for a writ of certiorari (290 U. S. 667).

Twenty-ninth: On information and belief, that the Supreme Court of the United States, on the 8th day of January, 1934, in the case of Fix v. Philadelphia Barge Co., 290 U. S. 530, held that Section 11 of the Act of February 13, 1925, relating to actions against officers of the United States Government (construed in the said case of Becker Steel Company of America v. Hicks, herinbefore referred to) related only to the particular action before the court, and did not in any way affect the cause of action which a claimant might have against United States officers, but such cause of action might survive, depending on its nature and the applicable rule.

Thirtieth: That in the month of February, 1934, complainant caused application to be made to the Attorney

General of the United States, calling attention to the facts hereinabove stated, and asking a recommendation for the payment of the claim of complainant for the return of $3,887.84 plus interest thereon.

[fol. 16] Thirty-first: After a conference had in the matter on March 1, 1934, the Attorney General's office refused to advise that the claim was valid; and no part of said sum of $3,887.84 with interest has been paid, and the same is now justly due and owing to complainant.

Thirty-second: On information and belief, by reason of the foregoing facts, Homer S. Cummings, Attorney General of the United States, in his official capacity at Alien Property Custodian, and each and every officer holding said position as Alien Property Custodian from July 12, 1918, up to and including the present time, and the Treasurer of the United States in office on July 12, 1918, and each and every Treasurer of the United States since that date (including the Treasurer of the United States at the present time), must be deemed in justice and truth to have had on hand as the property belonging to the complainant the sum of $3,887.84 and interest thereon from July 12, 1918.

Thirty-third: On information and belief, that up to the time of his death on September 22, 1933, Adolph Becker (hereinbefore referred to) was the president of this complainant, a director of the same, and the holdeer of all of its stock. Said Becker left him surviving a widow, Helen Becker; a son, Joseph C. Becker; and a daughter, Mrs. Hurtha M. Hone (formerly Becker), as his sole heirs and next of kin.

Wherefore, complainant prays:

1. That process may issue to be served upon the defendants and each of them, requiring them to appear and make answer thereto.

[fol. 17] 2. Upon the due hearing of the facts in this case and the establishment of complainant's claim herein, the Court may enter a decree and judgment directing and ordering the defendants, as Alien Property Custodian and as Treasurer of the United States, to pay and deliver to complainant the sum of $3,887.84, with interest thereon, to-

gether with costs, and granting complainant such other and further relief as may be just and equitable in the premises.

Townsend & Kindleberger, Solicitors for Complainant, Office and Post Office Address: 31 Nassau Street, Manhattan, New York City.

E. Crosby Kindleberger, of Counsel.

(Verified July 23, 1934.)

In United States District Court, Southern District of New York

In Equity. 78-289

Defendants' Motion to Dismiss.

Please take notice that the undersigned, appearing specially in this proceeding on behalf of the above named de- [fol. 18] fendants, will make a motion on the 14th day of August, 1934 at a motion term of the United States District Court for the Southern District of New York to be held in Room 235, Old Post Office Building, New York, N. Y. at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order dismissing the action herein on the ground that this Court does not have jurisdiction of the persons of the defendants or of the subject matter of the action.

Dated: New York, N. Y., August 9, 1934.

Yours, etc., Martin Conboy, United States Attorney for the Southern District of New York, Attorney for the Defendants, Appearing specially for the purpose of this motion. Office and P. O. Address, United States Courts and Post Office Building, Borough of Manhattan, City of New York.

To Townsend & Kindleberger, Esqs., Solicitors for Complainant, 31 Nassau Street, New York, N. Y.

[fol. 19] IN UNITED STATES DISTRICT COURT

Present: Honorable Julian W. Mack, United States Circuit Judge.

Order E 78-289

DECREE APPEALED FROM—Oct. 4, 1934

This cause came on to be heard on September 28, 1934 on the motion of the defendants, appearing specially, for an order dismissing the bill of complaint herein on the ground that this Court has no jurisdiction over the subject matter of the action or the persons of the defendants, and Martin Conboy, United States Attorney for the Southern District of New York, having been heard in support of said motion, and E. Crosby Kindleberger, having been heard in opposition thereto; and upon consideration thereof, it is

Ordered, adjudged and decreed that the defendants' motion to dismiss the bill of complaint be and the same hereby is granted, with costs to be taxed.

Julian W. Mack, U. S. C. J.

[fol. 20] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

E 78-289

BECKER STEEL COMPANY OF AMERICA, Complainant,

against

HOMER S. CUMMINGS, Attorney General of the United States in His Official Capacity as Alien Property Custodian, and WILLIAM A. JULIAN, as Treasurer of the United States, Defendants.

Townsend and Kindleberger, Esqs., Attorneys for Plaintiff. Martin Conboy, United States Attorney, Appearing specially for the purpose of this Motion, Francis H. Horan and Irvin C. Rutter, Assistant United States Attorneys, Attorneys for Defendants.

On Motion to Dismiss for Want of Jurisdiction

OPINION

MACK, Circuit Judge:

The bill alleges in substance that plaintiff is an American citizen, that its property was seized by the former Alien

Property Custodian as the property of an alien enemy and thus wrongfully seized, that it was sold for $20,000, that [fol. 21] nearly $4,000 was paid out by the Alien Property Custodian as expenses directly connected with the sale of such property, that theretofore an action was begun and a decree rendered in this court for $20,000, the value of the property so seized without any allowance for the expenses so incurred, that the decree was satisfied and full releases given by plaintiff on the payment of only the net amount of some $16,000, that thereafter, due to a later decision of the Supreme Court, the Government paid plaintiff interest on the $16,000 and that the amount deducted for the expenses, nearly $4,000, is still owing to the plaintiff. It seeks to recover this sum together with interest thereon from the time of the sale from the present alien Property Custodian and the present Treasurer of the United States.

An earlier suit for the same purpose was dismissed in this court with affirmance by the Circuit Court of Appeals on the ground that the reviver against the then Alien Property Custodian and Treasurer was improper. 66 F. (2d) 497.

Defendants' motion is based upon the propositions, conceded by plaintiff, that the suit is in substance against the United States and that the only authorization for such a suit is Section 9a of the Trading with the Enemy Act. Defendants contend that Section 9a requires for jurisdiction allegation that the Alien Property Custodian or the Treasurer of the United States actually holds, at the time of suit, the moneys sought to be recovered. Plaintiff has failed to allege any such present holding; indeed, it is expressly negatived by the bill. The allegations in the thirty-second paragraph of the bill are not an assertion that either of these defendants now has such money on hand, but only [fol. 22] that they "must be deemed in justice and truth to have" that money.

It is to be noted that plaintiff does not seek to set aside the satisfaction of the judgment for $20,000 or the releases given pursuant to the payment then made, on the ground of fraud, duress or otherwise; it relies solely on Section 9a, but urges that a present holding of any part of the property is not essential to a suit of this kind.

The exact question does not appear to have been decided in any of the cases that have been cited, although, in my

judgment, the intimations are against the interpretation asserted by plaintiff. Escher v. Woods, 281 U. S. 379 (1930); see, too, Kuttroff v. Sutherland, 66 F. (2d) 500 (C. C. A. 2, 1930). Unlike the Escher case, the government is not attempting to charge the proceeds of the sale with general administrative expenses of the Alien Property Custodian department; the allegation is definite that the payment of the expenses incurred in connection with the sale of this very property was made to third parties.

It seems to me clear that Section 9a, properly interpreted, was intended to give the person whose property had been wrongfully seized and sold, a remedy against the Government only for such property or money as at the time of the commencement of the suit is actually in the possession of the Alien Property Custodian or the Treasurer of the United States, and, as decided in Henkels v. Sutherland, 271 U. S. 298 (1925), any income therefrom actually received by the Government. It is not designed to charge the Government with liability for torts whether by the Alien Property Custodian or otherwise, and whether intentionel or through a misconstruction of the law by such official.

[fol. 23] Whether or not plaintiff has or had a remedy against the former Alien Property Custodian personally for the recovery of these moneys if wrongfully deducted, I need not pass upon. Such action at the best would be personal against him and not one in substance against the Government. The question of the effect of the releases would be relevant therein even if otherwise he should be deemed personally liable.

The bill will be dismissed for want of jurisdiction.

Julian W. Mack, U. S. Circuit Judge.

September 28, 1934.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity. 78-289

PETITION FOR AND ALLOWANCE OF APPEAL

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

Now comes the Becker Steel Company of America, the Complainant herein, by its solicitors, Townsend & Kindle-

berger, and complains that in the records and proceedings had in this cause and also in the rendition of the decree in [fol. 24] the above entitled cause in the District Court of the United States for the Southern District of New York, on the 4th day of October, 1934, certain errors were committed to the prejudice and damage of this complainant; all of which more fully appears in the assignment of errors filed herewith.

Wherefore, the said complainant hereby prays that an appeal may be allowed to the Circuit Court of Appeals for the Second Circuit, from the District Court of the United States for the Southern District of New York, for the correction of errors and the reversal of the final decree so complained of, and that a transcript of the record, proceedings and papers in this cause, as agreed to by the solicitors for the parties hereto duly authenticated, may be sent from said District Court to said Circuit Court of Appeals; and that such other order or process issue as may cause the aforesaid errors and decree to be corrected by the said Circuit Court of Appeals; and the said District Court be directed to enter decrees in this cause in conformity with the demand contained in the bill of complaint herein.

Dated New York, in the District Court of the United States, for the Southern District of New York, this 13th day of October, 1934.

Townsend & Kindleberger, Solicitors for Complainant, 31 Nassau Street, Borough of Manhattan, City of New York.

The foregoing appeal is hereby allowed.
Dated October 13th, 1934.

Francis G. Caffey, U. S. D. J.

[fol. 25] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity. No. 78-289

ASSIGNMENT OF ERRORS

Now comes the above named complainant, by its solicitors, Townsend & Kindleberger, and assigns error in the decree of this Court, entered October 4, 1934, in the following respects:

First: In that the Court erred in holding that Section 9-a of the Trading with the Enemy Act should be interpreted to authorize a deduction from the proceeds received from the sale of property of an American corporation, of alleged expenses for lawyers and accountants and other charges, aggregating nearly $4,000.00, without the consent of the complainant.

Second: In that the Court erred in failing to hold that the interpretation of Section 9-a of the Trading with the Enemy Act, made by the Court, would not render said statute unconstitutional and void, as in violation of the Fifth Amendment to the Constitution of the United States.

Third: In that the Court erred in failing to hold that the Alien Property Custodian and Treasurer of the United [fol. 26] States must be deemed to have held in their possession all sums of money which they were not lawfully authorized to expend; and that the fact that the moneys of the complainant were expended by payments to third persons is an insufficient defense to this suit.

Fourth: In that the Court erred in holding that any remedy that the complainant might have would be against the former Alien Property Custodian personally.

Fifth: In that the Court erred in granting the motion to dismiss the complaint for lack of jurisdiction of the subject matter of the action or of the persons of the defendants.

Wherefore, complainant prays that the said decree of the District Court be reversed and relief granted to the complainant, as set forth in the complaint herein.

Dated New York, October 11, 1934.

Townsend & Kindleberger, Solicitors for Complainant, 31 Nassau Street, New York City.

[fol. 27] Citation, in usual form, omitted in printing.

[fol. 28] In United States District Court for the Southern District of New York

Stipulation as to Transcript of Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court, as agreed on by the parties.

Townsend & Kindleberger, Solicitors for Complainant-Appellant. Martin Conboy, Solicitor for Defendants-Appellees, Appearing Specially.

[fol. 29] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 30] In United States Circuit Court of Appeals for the Second Circuit

Becker Steel Company of America, Appellant,

against

Homer S. Cummings, Attorney General of the United States in His Official Capacity as Alien Property Custodian, and William A. Julian, as Treasurer of the United States, Respondents

Before L. Hand, Swan and Chase, Circuit Judges

Appeal from an Order of the United States District Court for the Southern District of New York

E. Crosby Kindleberger for the Appellant.
Martin Conboy for the Appellees.

Opinion—Filed March 4, 1935

Per Curiam:

Order affirmed on opinion below.

[fol. 31] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

BECKER STEEL COMPANY OF AMERICA, Plaintiff-Appellant,

vs.

HOMER S. CUMMINGS, Attorney General of the United States, et al., Defendants-Appellees

Appeal from the District Court of the United States for the Southern District of New York

DECREE—Filed March 11, 1935

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 32] [File endorsement omitted.]

[fol. 33] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 34] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 29, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,448. U. S. Circuit Court of Appeals, Second Circuit. Term No. 13. Becker Steel Company of America, petitioner, vs. Homer S. Cummings, Attorney General of the United States, etc., et al. Petition for a writ of certiorari and exhibit thereto. Filed March 27, 1935. File No. 13. O. T., 1935.

(6452-C)